

FIRST AMENDMENT
TO
CATERING AND CONCESSION SERVICE AGREEMENT
AUSTIN CONVENTION CENTER DEPARTMENT

The Catering and Concession Service Agreement dated November 24, 1997 (the "Agreement") between Fine Host Corporation (the "Caterer") and City of Austin, Texas (the "City").

WHEREAS, Fine Host and the City are parties to the Agreement; and

WHEREAS, the parties wish to modify and amend certain provisions of the Agreement in accordance with the terms set forth herein; and

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

NOW, THEREFORE, the parties intending to be legally bound hereby, mutually agree as follows:

1. Section 1.2 is amended as follows:

The second sentence thereof is deleted and the following is substituted therefor: "The initial Accounting year shall begin on October 1, 2001 and end on September 30, 2002."

2. Section 1.4 The last sentence of Section 1.4 shall be deleted.
3. Section 1.14 "October 1, 1997" shall be deleted and "October 1, 2001" shall be substituted therefor.
4. Section 1.24 "eight-tenths (.8)" shall be deleted and ".95" shall be substituted therefor.
5. Section 1.25 In the first sentence of Section 1.25, the words "twenty percent (20%)" shall be deleted and "five percent (5%)" substituted therefor. The last sentence of Section 1.25 shall be deleted.
6. Section 1.27 shall be deleted in its entirety and the following substituted therefor:

Periodic Fixed Fee means a fee payable to the Caterer after each Accounting Month. During the first Accounting Year, the Periodic Fixed Fee shall be \$33,333.33 per Accounting Month. Subject to the limitation described in Section 5.1, the Periodic Fixed Fee payable in subsequent Accounting Years shall be adjusted as follows: the Periodic Fixed Fee for the immediately preceding Accounting Year shall be increased or decreased in accordance with the increase or decrease in the Consumer Price Index, as used by City of Austin for budget purposes (the Consumer Price Index-All Urban Consumers, or CPI-U) for the twelve-month period beginning June 1 of the previous Accounting Year and ending on the following May 31.

7. Article II shall be deleted in its entirety and the following substituted therefor:

"This Agreement shall begin on the Effective Date and expire on September 30, 2012, provided, however, that the City shall have the option, in its sole discretion, to extend this Agreement for an additional five-year period under the same terms and conditions. The City shall exercise this option by providing written notice to Fine Host of its desire to extend this Agreement, such notice to be provided not later than June 30, 2012."

8. Section 3.1.1 The first sentence shall be deleted and the following sentence substituted therefor: "Caterer shall have the exclusive right to sell food, non-alcoholic beverages, gifts and novelties at the Austin Convention Center, and the non-exclusive right to sell food, non-alcoholic beverages, gifts and novelties at the other Center facilities covered by this Agreement as long as the Department manages those facilities."

9. Section 5.1 shall be deleted in its entirety and the following Substituted therefor:

"Compensation. The Caterer shall be entitled, as sole compensation for services under this Agreement, to the Periodic Fixed Fee, together with any Productivity Reward. The Periodic Fixed Fee shall be payable to the Caterer in equal monthly installments, commencing at the end of the first Accounting Month. The Periodic Fixed Fee during the first Accounting Year shall be \$33,333.33 per Accounting Month. The Periodic Fixed Fee payable to Caterer in subsequent Accounting Years shall be adjusted as follows: the Periodic Fixed Fee for the immediately preceding Accounting Year shall be increased or decreased in accordance with the increase or decrease in the Consumer Price Index, as used by City of Austin for Budget purposes (the Consumer Price Index-All Urban Consumers, or CPI-U) for the twelve-month period beginning June 1 of the pervious Accounting Year and ending on the following May 31, provided, however, that the cumulative amount of all increases to the Periodic Fixed Fee throughout the term of this Agreement may not exceed \$42,000.00 without the approval of the City Council."

10. Section 5.3 The last sentence of Section 5.3 shall be deleted in its entirety.

11. Section 6.6 The second sentence is amended to delete "April 30, 2008" and substitute "April 30, 2013" therefor.

12. Section 13.1 is deleted and the following substituted therefor:

"This Agreement shall commence on October 1, 2001 and shall terminate on September 30, 2012, unless sooner terminated as provided in this Article XIII, provided, however, that the City shall have the option, in its sole discretion, to extend this Agreement for an additional five-year period under the same terms and conditions. The City shall exercise this option by providing written notice to Fine Host of its desire to extend this Agreement, such notice to be provided not later than June 30, 2012."

13. Add Section 13.5.6 as follows:

"Equipment Repayment. The City shall pay Caterer the fair market value of the equipment in accordance with Article XV."

14. Article XV shall be deleted in its entirety and the following shall be substituted therefor:

"Article XV

Required Investment

Upon the Effective Date, the Caterer shall invest One Million Five Hundred Thousand (\$1,500,000.00) Dollars (the "Investment") which will be used by Caterer to purchase such kitchen equipment for the Convention Center as Caterer and the City shall agree upon in writing (the "Equipment").

If this Agreement is terminated by either party prior to September 30, 2011, for any reason other than Caterer's failure to cure a default under this Agreement within the sixty (60) day time period set forth in Section 3.2, City shall pay Caterer an amount equal to the fair market value, as of the date of termination, of the Equipment no later than ninety (90) days following the date of termination. Fair market value of the Equipment will be determined according to the following schedule, and use shall be determined from the date of installation:

After first year of use Equipment value is 70% of purchase price.

After second year of use Equipment value is 50% of purchase price.

After third year of use Equipment value is 40% of purchase price.

After fourth year of use Equipment value is 30% of purchase price.

After fifth year of use Equipment value is 25% of purchase price.

After sixth year of use Equipment value is 20% of purchase price.

After seventh year of use Equipment value is 15% of purchase price.
After eighth year of use Equipment value remains 10% of purchase price.

Title to the Equipment shall pass to the City upon payment in full of the fair market value of the Equipment, as described above or, if this Agreement shall remain in effect through September 30, 2011, title to such Equipment shall pass to City without the requirement of any further payment or consideration therefor. Caterer agrees to promptly complete all paperwork necessary to transfer title to the Equipment to City.

15. Add Article XVI, Section 16.1 as follows:

"Confirmation and Integration. Except as expressly amended by this First Amendment, the parties hereby confirm and ratify the Agreement in its entirety. The Agreement, as amended by this First Amendment, constitutes the entire agreement between City and Caterer pertaining to the subject matter of the Agreement, as so amended, and supersedes all prior and contemporaneous agreements and understandings of City and Caterer in connection therewith."

16. Add Section 16.2 as follows:

"Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Texas without regard to its conflicts of laws provisions. The venue for any dispute between the parties shall be in Travis County, Texas."

17. Add Section 16.3 as follows:

"Counterparts. This Amendment may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute but one and the same original document."


18. Add Section 16.4 as follows:

"Headings. The section headings herein are for convenience only and do not define, limit or construe the contents of such sections."

IN WITNESS WHEREOF, the parties have executed this First Amendment to Catering and Concession Service Agreement as of this 23 day of August 2001, to be effective on October 1, 2001.

CATERER

FINE HOST CORPORATION

By: 
Chris Verros
Group President

CITY

CITY OF AUSTIN,
A Home Rule Municipality
P.O. Box 1088
Austin, Texas

By: 